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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of :
:
Redevelopment of Spectrum to : ET Docket No. 92-9
Encourage Innovation in the :
Use of New Telecommunications :
Technologies :

To: The Commission

COMMENTS OF BELL SOUTH CORPORATION

BellSouth Corporation ("BellSouth") herewith submits the following Comments in response to the Commission's Notice of Proposed Rulemaking in the captioned proceeding.

INTRODUCTION

BellSouth commends the Commission for the foresight and initiative of its proposal to establish spectrum to accommodate new and innovative services made available through emerging and anticipated future technologies. BellSouth supports this objective and the proposed equitable relocation of currently licensed 2 GHz point-to-point microwave users. BellSouth continues in its belief that market forces may be relied upon to expedite this process fairly and to minimize the regulatory and judicial resources that might otherwise be required to effect these changes.

TRANSITION PLAN

In its Notice, the Commission eschews the draconian approach to band clearing employed in the 1970's in favor of a more flexible process designed to minimize, if not wholly

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avoid, economic harm to licensed incumbents and to permit sufficient time for rational planning of service provisioning alternatives. The Notice thus takes into account the vastly greater number of licensees to be displaced in the 1990's and the importance to the nation of the services currently rendered within the targeted bands. Having proposed a ten to fifteen year period prior to reclassification from primary to secondary status; having noted the possibility that secondary basis licensees in many geographic areas may never be required to relocate; and having secured the primary status of the existing licenses of state and local governments, the Commission inquires of other approaches that might lessen the impact upon existing fixed microwave systems, while timely achieving the Commission's objectives.¹ Specifically, the Commission inquires of the efficacy of an alternative phased spectrum implementation approach.

BellSouth supports the adoption of a phased spectrum implementation. A phased approach will permit a more highly focused market estimate of the value of early introduction of specific new services and will better protect against speculation in the acquisition (or reservation) of frequencies. Within the 220 MHz of spectrum, the Commission should identify each service desired with sufficient particularity to determine the optimum amount and location

¹Notice, p.13

required. As each is so identified and rules are adopted for its licensing, then the "service transition period" should commence for reclassification of current licenses (other than state and local government) from primary to secondary status ("commencement date"). This should assure that spectrum is not cleared "willy-nilly" for a service that "never shows up", and the intensive focus of this procedure should optimize targeting the right amount of spectrum for each new service. BellSouth submits that the service transition period base should be ten years, the shorter of the two periods suggested in the Notice, and one which will assure current licensees an opportunity to recover investment in current radio facilities. The shorter period better serves the Commission's desire to make spectrum promptly available for services employing emerging technologies. However, recognizing that many, indeed most, licensees will have already partially amortized investment in radio properties when the service transition period commences, BellSouth proposes that the base service transition period be further reduced for each incumbent licensee by the number of years the license was issued prior to the commencement date. However, in order to assure incumbent licensees adequate time to plan, negotiate and provision alternative service facilities, in no event should the reduced service transition period be less than five

years.² For example, if a new service were authorized in the 1850-1870 band in 1993, an incumbent whose license was issued in 1991 would retain co-primary status for eight years. If the new service were not authorized for that band until 1998, the incumbent would have five years thereafter, 2003, to retain co-primary status, the seven year reduction of the ten year base period being limited by the five year service transition period minimum. This reduction in the service transition period should offset, at least in part, any delay that might be occasioned by commencing a separate transition period for each spectrum segment authorized for a new service. Thus is served the Commission's intent to ensure the timely availability of 2 GHz frequencies for new services.

BellSouth agrees with the Commission that negotiation for the relocation of incumbent licensees should be permitted during the service transition period and proposes that only the new licensees for that spectrum be permitted to do so. These provisions should dissuade speculation in the "relocation rights" of incumbents and preclude the development of relocation mills that, by aggregating powers

²BellSouth recognizes that in some instances radio facilities may be augmented or replaced after licensing. However, establishment of a service transition period relative to the facility installation dates of each licensee would be administratively infeasible, even if potentially more equitable. In those few individual situations where substantial hardship could be shown, relief through waiver of the rules should be available.

to delay the introduction of new services, may force higher the price of entry. Such speculative pricing could well have a chilling effect upon serious proponents of new services.

The Commission inquires in the Notice whether all currently licensed 2 GHz fixed users might be permitted to retain co-primary status indefinitely, leaving wholly to market forces the relocation of existing licensees. Elimination of the proposed mandatory reclassification of licensees from primary to secondary status will diminish incentive to find alternative service vehicles. The natural consequence would be to delay the transition and to incur higher prices to effect relocation. Incumbents might forego negotiating with the first newly licensed providers where little or no risk is occasioned by waiting to see if other potentially more valuable (and, consequently, conceivably more generous) services are licensed within the same available spectrum.

SHARING SPECTRUM

The Commission requests comment on the technical feasibility of its proposal to permit sharing between new services and the existing 2 GHz fixed microwave operations on a co-primary basis during the service transition period. Spectrum sharing within separate discrete geographic areas poses only the problem of coordination as exists among authorized providers of the same service. Within a common

geographic area, spectrum sharing might offer a means for coexistence of co-primary users in a band, including both broadcast and point-to-point services. However, attempts at proving the merits of various technical proposals have thus far been less than conclusive. BellSouth foresees that potential conflicts must be resolved on a case-by-case basis and should be determined prior to the issuance of the license for new service on a co-primary basis. Moreover, the burden should rest with the new applicant to prove non-interference, both when service is to be initiated and as the service is to function when fully developed.

If the applicant for new service acknowledges that non-interference is not possible, a construction permit may yet be issued, but grant of the license would be subject to the applicant effecting an accommodation with the incumbent(s). Service rules for the duration of the construction permit and initiation of service must then account for the period afforded incumbents to remain as co-primary users of the spectrum.

FINANCIAL ARRANGEMENTS

BellSouth submits that no artificial constraints on compensation for relocation are necessary. Incumbents should reasonably expect full restitution for the costs of relocation, including business lost in the process, if any. Premiums above costs might be demanded, but the combination of market forces and the imminent expiration of the service

transition period should prevent excesses. The unduly greedy incumbent could witness the end of the transition period with no compensation and an obligation thereafter to reconfigure to accommodate the new service at its own expense, or to terminate its former use altogether. Rational operators will not allow that consequence.

The Commission should further discourage speculation in the issuance of licenses for new services by limiting the transfer of the license for a fixed period after its issuance and requiring the system to be built out within a time certain. If the Commission should do so, however, BellSouth suggests that no limitation should preclude incumbent licensees from entering joint ventures centered on the new service as partial compensation for the incumbent's relocation. This could be accommodated by modification of the application after the construction permit is granted and prior to license issuance. This limited form of transfer could encourage more rapid deployment of new services without stimulation of speculation in licenses.

SPECTRUM MERIT CRITERIA

The Commission also seeks comment on the criteria to be applied in determining whether a new service or expansion of existing service merits frequencies from the emerging technologies bands. By far the most salient criterion is that which is most difficult to articulate and, judging the spate of unimaginative filings for pioneer preferences, that

which is difficult for frequency starved entrepreneurs to recognize. The proposed service should be either genuinely new, different in kind and character from those currently authorized or, in the case of an expansion of an existing service, a technological improvement of such quantum difference in quality or spectrum efficiency such that even a stranger to the service could readily distinguish old from new. Alternatively, in the case of expansion of an existing service, it might be sufficient to show that the public will be better served with the grant of additional spectrum to preserve competitive equity among service providers. In any event, however, the new service proponent should be obliged to show that there is significant public demand for the service, that the proposed technology is feasible and equipment is then available and that the proposed service has a reasonable chance of being financially viable.

CUTOFF DATE

The Commission proposes that all licenses issued after January 16, 1992, for fixed services in the 2 GHz band be on a secondary basis. While this proposal would indeed deter speculation in 2 GHz licenses, it would also have an undesirable consequence. It would retroactively impact legitimate on-going traditional use of those frequencies under licenses for which application has already been made or for which significant effort and expense has been incurred to permit applications to be filed in the near

future in the ordinary course of business. The inequity which invariably accompanies the retroactive application of new policy can be wholly eliminated by establishing the cutoff date coincident with the effective date of the new rule. In the interim It is unlikely speculators would venture to incur the obligation to build point-to-point services on the off chance that a new service provider might pay the cost of those facilities and a premium in order to provide a wholly different new radio service.


CONCLUSION

The Commission's proposal to clear spectrum for new services relying upon emerging and future technologies goes to considerable lengths to avoid hardship to incumbent licensees whose services might require displacement to other frequencies or other transmission media. In addition, the Commission has posed alternatives which, if adopted, could further ease the required transition. BellSouth encourages the Commission to adopt a phased spectrum implementation tailored, insofar as administratively feasible, to avoid inequity to individual licensees, conditioned to avoid speculation in new frequencies, and permitting market forces to value frequency displacement to the greatest extent. Coupled with spectrum merit criteria which will assure

genuinely new services that will currently and effectively meet market needs, these proposals will well serve American consumers.

Respectfully submitted,

BELLSOUTH CORPORATION

By: 
William B. Barfield
Suite 1800
1155 Peachtree Street, N.E.
Atlanta, GA 30367-6000
(404) 249-2641

Date: June 5, 1992

CERTIFICATE OF SERVICE

I, Evelyn T. Craig, hereby certify that I have served all parties to this action with a copy of the foregoing Comments by placing a true and correct copy of same in the United States mail, postage prepaid, addressed to those persons on the attached service list.

This 5th day of June, 1992.


Evelyn T. Craig

SERVICE LIST DOCKET NO. 92-9

Public Service Company
of Colorado
Dale V. Fetchenhier
V. P. Information Technology
& Service
1225 17th St., Suite 600
Denver, CO 80202

Alcatel Network Systems
Robert J. Miller
1601 Elm Street, Suite 3000
Dallas, TX 75201

US Department of Commerce
Thomas J. Sugrue
Assistant Secretary for
Communications
Washington, D.C. 20230

American Personal Communications
Jonathan D. Blake
Kurt A. Wimmer
Covington & Burling
P.O. Box 7566
Washington, D.C. 20044

Alabama Electric Cooperative
James A. Vann, Jr.
V.P. and General Manager
P.O. Box 550
Andalusia, AL 36420

Utilities Telecommunications
Council
Jeffrey L. Sheldon
Sean A. Stokes
1140 Connecticut Ave., N.W.
Washington, D.C. 20036

American Petroleum Institute
Wayne V. Black
Rich D. Rhodes
Keller and Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

George DuBois
10048 NE Campaign St.
Portland, OR 97220-3534

Ohio State Highway Patrol
Colonel Thomas W. Rice
Columbus, OH 43205-0037

Union Telephone Company
John G. Woody
Chief Engineer
P.O. Box 160
Mountain View, WY 82939

Association of American Railroads
and Large Public Power Council
Thomas J. Keller
Erwin G. Krasnow
Lawrence R. Sidman
Jacqueline R. Kinney
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005

American Petroleum Institute
Wayne V. Black
Rick D. Rhodes
Keller and Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

Medina Electric Cooperative
Michael D. Weiblen
Manager of Engineering
P.O. Box 370
Hondo, TX 78861

Arizona Department of Public
Safety
L.L. Hallman, Manager
Technical Communications Div.
P.O. Box 6638
Phoenix, AZ 85005-6638

Public Service Commission of
Nevada
Thomas E. Stephens, Chairman
727 Fairview Drive
Carson City, NV 89710

General Motors Research Corp.
Patricia L. Wize, Assistant
Secretary
P.O. Box 5121
Southfield, MI 38086-5121

Vincent M. Hardy
R.R. #4
Box No. 15-C
Bishop, CA 93514

Southern Natural Gas
Brad Diard
Engineer
P.O. Box 2563
Birmingham, AL 35202-2563

San Diego Board of Supervisors
George F. Balley
Chairman
County Administration Center
1600 Pacific Highway, Room 335
San Diego, CA 92101

Jefferson Electric Membership
Corporation
Ralph C. Burke
Manager, Telecommunications
P.O. Box 312
Louisville, GA 30434

NERC Telecommunications Subcommittee
Sam R. Jones, P.E.
Electric Utility Department
721 Barton Springs Road
Austin, TX 78704

Palisades Group
Eva Learner-Lam, Principal
85 Palmer Avenue
Tenafly, NJ 07670

Palisades Group
Scott J. Rafferty
4730 Massachusetts Ave.
Washington, D.C. 20016

Metropolitan Water District
of Southern California
Francesca M. Krauel, Director
Governor Park
5090 Shoreham Place, Suite 101
San Diego, CA 92122

Metropolitan Water District
S. Dell Scott, Director
Gilllin, Scott, Alperstein,
Glantz & Simon
Suite 1520
15760 Ventura Boulevard
Encino, CA 91436-3095

Metropolitan Water District
Dale Mason, Director
P.O. Box 7
San Marcos, CA 92069

Metropolitan Water District
Doude Wysbeek, Director
117 Macnell Street
San Francisco, CA 91340-2993

Metropolitan Water District
Daniel H. Young, Director
P.O. Box 1988
Santa Ana, CA 92702

Metropolitan Water District
Regina Murph, Director
205 South Willowbrook Ave.
Compton, CA 90220

Southeast Ohio Emergency
Medical Services, Inc.
Eric A. Kuhn, Director of
of Communications
Headquarters
3240 State Rt. 160
Gallipolis, OH 45631

Century Tel. Enterprises, Inc.
Harold Mordkofsky
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W.
Washington, D.C. 20037

Cox Enterprises, Inc.
Werner K. Hartenberger
Laura H. Phillips
Dow, Lohnes & Albertson
1255 23rd St., Suite 500
Washington, D.C. 20037

Time Warner Telecom., Inc.
Stuart F. Feldstein
Fleischman and Walsh
1400 Sixteenth St., N.W.
Washington, D.C. 20036

Williams Natural Gas Co.
Howard Janzen
P. O. Box 3288
Tulsa, OK 74101